

CHAPTER 145. DISPUTE RESOLUTION - HEARINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

§145.1. Scope and Applicability.

- (a) Scope of these rules. Except for benefit disputes, governed by chapters 140, 142, and 143 of this title (relating to Dispute Resolution-General Provisions; Dispute Resolution-Benefit Contested Case Hearing; and Dispute Resolution-Review by the Appeals Panel), these rules govern all hearings provided by the Commission to adjudicate disputes arising under the Texas Workers' Compensation Act (the Act), where the first day of a hearing in which evidence is admitted occurs prior to January 1, 1996 or where pre-evidentiary-hearing procedures occur prior to January 1, 1996.
- (b) Applicability of the Administrative Procedure Act. The sections of the Administrative Procedure Act (APA) enumerated in the Texas Labor Code, '401.021(1), apply to the hearings governed by this chapter. In hearings involving those sanctions defined by the Texas Labor Code, "402.072, 407.046, and 408.023, the Commissioners render the final decision and the provisions of the APA, '2001.062, will be followed.

The provisions of this §145.1 adopted to be effective, December 4, 1995, 20 TexReg 9706.

§145.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- 1. Commission Representative - The attorney or representative designated by general counsel to represent the Commission.
- 2. Hearing Officer - The attorney designated by the Hearing Division to preside over the hearing.
- 3. Party - A person including the Commission entitled to take part in a proceeding because of a direct legal interest in the outcome.
- 4. Petitioner - The person who has filed a written request for a hearing in accordance with these procedures.
- 5. Respondent - The person responding to the petitioner's request for a hearing.

The provisions of this §145.2 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.3. Requesting a Hearing.

- (a) The person requesting a hearing must file a written request with the Commission not later than 20 days after receipt of the official notice of adverse action from the Commission.
- (b) If the notice of adverse action is a notice of violation, the person charged must file an answer not later than the 20th day after the date of receipt of the notice. The answer must either consent to the proposed sanction, and remit the amount of the penalty, if any, or request a hearing.

The provisions of this §145.3 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.4. Notice of Hearing

- (a) Scheduling the hearing. No later than 30 days after receiving a request for hearing, the hearing officer shall schedule the date, time, and location of the hearing.

- (b) Notice of hearing. No later than 20 days before the hearing date, the hearing officer shall notify the parties in writing of the date, time, place and nature of the hearing and the legal authority and jurisdiction under which the hearing will be held.
- (c) Expediting the hearing. The hearing officer may expedite any or all parts of the hearing if any party requesting it provides a verified statement of good cause, the opposing party has the opportunity to respond, and the hearing officer makes a determination of good cause. In this event, all parties shall be sent notice no later than 10 days prior to the expedited hearing date of the hearing officer's decision to expedite any or all parts of the hearing. The written notice shall include:
 - (1) a statement of the date, time, place, and nature of the hearing and;
 - (2) a statement of the legal authority and jurisdiction under which the hearing will be held.
 - (3) a reference to the particular sections of the statutes and rules involved and a concise statement of the matters asserted.

The provisions of this §145.4 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.5. Statement of Matters Asserted.

Except for expedited hearings, the Commission's representative must deliver to the petitioner and file with the hearing officer no later than 10 days prior to the hearing date:

- (1) a reference to the particular sections of the statutes and rules involved; and
- (2) a concise statement of the matters asserted.

The provisions of this §145.5 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.6. Venue

Hearings are held in Austin, Travis County, unless the hearing officer is provided with an affidavit of venue stating good cause exists, the opposing party has the opportunity to respond, and the hearing officer makes a determination of good cause for holding the hearing elsewhere.

The provisions of this §145.6 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.7. Appearance

- (a) A party may appear on his or her own behalf, or be represented by a designated person.
- (b) A party may represent himself or herself or be represented by a designated person. A party or designated person may be represented by an attorney who is licensed to practice law in Texas. The right to be represented by an attorney may be expressly waived.

The provisions of this §145.7 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.8. Withdrawal of Hearing Request.

The petitioner may, at any time before the conclusion of the hearing, submit a written request to withdraw the request for a hearing.

The provisions of this §145.8 adopted to be effective June 12, 1991, 16 TexReg 2989

§145.9. Informal Disposition.

Informal disposition of any case may be made by a written stipulation, an agreed settlement or consent order, or default.

The provisions of this §145.9 adopted to be effective 1991, 16 TexReg 2989.

§145.10. Filing Instruments: Furnishing Copies.

- (a) Filing instruments. All instruments relating to a pending, proceeding, including pleadings, requests, motions, and responses, shall:
 - (1) be in writing;
 - (2) specify the desired relief, and grounds for relief; and
 - (3) be filed with the hearing officer.
- (b) Motions. If based upon matters that do not appear of record, a motion must be supported by affidavit.
- (c) Furnishing copies. A copy of every instrument shall be provided by the party offering it to every other party or attorney. A certification of this fact shall accompany the original instrument filed with the Commission. Failure to provide copies may be grounds for refusal to consider the instrument.
- (d) Certificate of service. A certificate by the party, or attorney who files a pleading stating that it has been served on the other parties will be considered prima facie evidence of service. The following form of certificate is sufficient:

"I hereby certify that I have on this day of , 19 , served a copy of the attached instrument on _____ state the name of the other parties on whom a copy was served] by _____ [state the manner of service.]" _____ Signature

The provisions of this §145.11 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.11. Administrative Procedure and Texas Register Act Prehearing Conference.

- (a) On the motion of any party, or on his or her own motion, the hearing officer may direct the parties and their representatives to appear at a specified time and place for a conference before the hearing, for the purpose of:
 - (1) formulating issues;
 - (2) simplifying issues;
 - (3) discussing matters to be officially noticed;
 - (4) discussing the possibility of making admissions of certain averments of fact or stipulations concerning the use by any party of matters of public record, such as the official records of the Commission, for the purpose of avoiding the unnecessary introduction of proof;
 - (5) ruling on previously filed motions;

- (6) discussing the procedure to be followed at the hearing;
 - (7) discussing the limitation, where possible, of the number of witnesses; and
 - (8) discussing any other matters that may assist in the simplification of the proceedings and the disposition of the case, including settlement of issues in dispute.
- (b) Action taken at the conference shall be recorded in any appropriate order by the hearing officer.

The provisions of this §145.11 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.12. Request for Alternative Dispute Resolution.

A party may request alternative dispute resolution. If the request is granted, the hearing officer will notify the chief hearing officer who will appoint another hearing officer to assist in the dispute resolution process. If the dispute resolution process is successful, then the settlement will be reduced to writing, signed by the parties and submitted to the assisting hearing officer for entry of orders. If the dispute resolution process is unsuccessful, the case shall be reset as quickly as possible for hearing by the original hearing officer.

The provisions of this §145.12 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.13. Discovery and Production of Documents and Things for Inspection, Copying or Photographing.

- (a) Inspection, copying and photographing things and entry upon on land. Upon timely motion of any party and upon notice to all other parties, and subject to such limitations of the kind provided for discovery under the Texas Rules of Civil Procedure, the hearing officer may order any party to:
- (1) produce and permit the inspection and copying or photographing by or on behalf of the moving party of any of the following that are in his possession, custody or control: designated documents, papers, books, accounts, letters, videotapes, photographs, objects, or tangible things, not privileged, that constitute or contain, or are reasonably calculated to lead to the discovery of, evidence that is material to any matter involved in the action;
 - (2) permit entry upon designated land or other property in that party's possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated objects or operation on the property that may be material to any matter involved in the action.
- (b) Order permitting discovery. The order must specify the time, place and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe terms and conditions that are just.
- (c) Reports and statements. The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions, of an expert who will be called as a witness. Provided, however, that the rights herein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the suit or to other communications between any party and his agents, representatives, or the employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has arisen.
- (d) Statement previously made. Any person, whether or not a party, is entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter. If his request is refused,

he may move for an order according to this section. For the purpose of this section, a statement previously made is either:

- (1) a written statement signed or otherwise adopted or approved by the person making it; or
 - (2) a videotape, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.
- (e) Nonparty discovery. The hearing officer may order a person not a party to the hearing to appear and produce relevant documents or things according to this section. The hearing officer may make this order only after a motion has been filed specifically stating the request and necessity therefore. All parties and those who are not parties must have the opportunity to object in writing to the motion. The hearing officer may hold a hearing on the motion at the hearing officer's discretion.
- (f) Admissions of facts and genuineness of documents. Any time after the request for a hearing, a party may deliver or have delivered to any other party a written request for admissions of facts and genuineness of documents. The provisions of the Rules of Civil Procedure, Rule 169 apply, except that filing and enforcing are controlled by the hearing officer and that the time limit to respond is 25 (not 30) days.
- (g) Interrogatories to parties. Any time after the hearing has been docketed, any party may serve interrogatories upon any other party. The provisions of the Rules of Civil Procedure, Rule 169 apply, except that filing and enforcing are controlled by the hearing officer and the number of questions is limited to no more than 25 answers.

The provisions of this §145.13 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.14. Subpoenas; Depositions.

- (a) Request for subpoena. On the hearing officer's own motion or on the written request of any party, and a showing of good cause, and on the deposit of sums that reasonably ensure payment of the amounts estimated to accrue under this section, the hearing officer may issue a subpoena addressed to the sheriff or any constable to require the attendance of a witness and production of books, records, paper or other objects that may be necessary and proper for the purpose of the proceedings.
- (b) Request for deposition. On the hearing officer's own motion or on any party's written request and on deposits of sums that reasonably ensure payment of the amounts estimated to accrue under this section, the hearing officer may issue a Commission addressed to the several officers authorized by statute to take depositions, to require that the deposition of a witness be taken. The hearing officer authorizes the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purpose of the proceeding. The deposition of a member of an agency, board or Commission may not be taken after a hearing date has been set. The deposition is taken according to the requirements of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.
- (c) Filing request for deposition. Request for Commissions are addressed to the hearing officer.
- (d) Objections during deposition. The officer taking the oral depositions may not sustain objections to any of the testimony taken, or exclude any of it, and any of the parties or attorneys engaged in taking testimony may have their objections reserved for the action of the hearing officer. The hearing officer is not confined to objections made at the taking of the testimony.
- (e) Returning completed deposition to the Commission. A deposition may be returned to the Commission either by mail, by a party interested in taking the deposition, or by any other person. If returned by mail, the

Commission must endorse the deposition to show it was received from the post office. The Commission employee receiving the deposition must sign it. If it is not sent by mail, the person delivering it to the Commission must make an affidavit before a Commission representative that:

- (1) he received it from the hands of the officer before whom it was taken;
 - (2) it has not been out of his possession since; and
 - (3) it has undergone no alteration.
- (f) Opening deposition at the Commission. After the deposition is filed with the Commission, any Commission employee may open the deposition at the request of either party or his counsel. The employee must endorse the deposition by entering the date and name of the person who asked that it be opened. The employee must then sign the deposition. The deposition must remain on file with the department and may be inspected by any party.
- (g) Failure to comply with subpoena or Commission. If a person fails to comply with a subpoena or Commission, the Commission acting through the attorney general or the party requesting the subpoena or Commission, may bring suit to enforce the subpoena or Commission in a district court in Travis County or in the county in which the hearing is scheduled to be held.

The provisions of this §145.14 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.15. Ex Parte Communications.

The Administrative Procedure and Texas Register Act, Article 6252-13a, '17, applies to Commissioners and employees of the Commission. It provides that:

- (1) unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate; and
- (2) an agency member may communicate ex parte with other members of the agency, and pursuant to the authority provided in '14(9), members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.

The provisions of this §145.15 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.16. Conduct and Decorum.

- (a) The hearing officer may at the beginning of any proceeding and during the course of that proceeding establish rules of decorum to be followed during the proceeding. The hearing officer may also establish times for beginning the proceeding, for recesses, and for ending the proceeding.
- (b) Parties and participants in a proceeding shall conduct themselves with dignity, shall show courtesy and respect for one another and for the hearing officer, shall follow the decorum prescribed by the hearing officer at the proceeding, and shall adhere to the beginning times of the proceeding, and to the times established for each recess and for ending the proceeding.

- (c) To maintain and enforce proper conduct and decorum at a proceeding, and to enforce promptness at a proceeding, the hearing officer may take appropriate action, including but not limited to:
 - (1) issuing a warning;
 - (2) excluding any person from the proceeding;
 - (3) recessing the proceeding; and
 - (4) writing an administrative violation.

The provisions of this §145.20 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.17. Hearing Officer's Authority.

- (a) The hearing officer is in charge of the proceedings.
- (b) The hearing officer has the authority to:
 - (1) administer oaths;
 - (2) examine witnesses;
 - (3) issue subpoenas and Commissions; and
 - (4) rule on the admissibility of evidence and amendments to pleadings.
- (c) The hearing officer may also:
 - (1) establish reasonable time limits for conducting hearings;
 - (2) establish reasonable time limits for accepting requests for additional information; and
 - (3) issue any intermediate orders.
- (d) The hearing officer has the authority to issue any orders necessary to enforce rulings, including, but not limited to:
 - (1) limiting evidence or witnesses;
 - (2) limiting oral argument;
 - (3) entering appropriate orders or default decisions on any issue;
 - (4) postponing, recessing or dismissing the hearing, with or without prejudice; or
 - (5) making a referral for sanctions or penalties of a disruption of the hearing process or a violation of orders.
- (e) Upon a finding of good cause as determined by the hearing officer, the hearing officer may postpone, continue, or recess the hearing.

- (f) Before or during a hearing, the hearing officer may call any witness or witnesses or request any party to call a witness or witnesses that the hearing officer believes are necessary.

The provisions of this §145.17 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.18. Parties' Rights in Hearings.

- (a) Subject to the hearing officer's ruling and orders, opportunity must be given to all parties to present and respond to evidence and argument on each issue involved.
- (b) The petitioner and respondent shall be permitted to call any witness desired, within the limits set by the hearing officer.
- (c) The parties to a hearing may conduct cross-examination of witnesses.

The provisions of this §145.18 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.19. Failure to Appear.

If a party seeking relief does not appear for the hearing, after presentation of a prima facie case by the opposing party, a default decision will be entered, absent good cause that prevented the party's appearance. An administrative violation may be written by the hearing officer

The provisions of this §145.19 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.20. Recording the Hearing.

- (a) Recording by the hearing officer. Except as otherwise provided, the hearing will be recorded by the hearing officer on audio cassette tape. The hearing officer may, on his or her own motion, provide a certified hearings reporter to make a verbatim record or transcript of a hearing, and may assess the costs to one or more of the parties.
- (b) Recording by a party. A party may, with prior notice to the hearing officer, furnish a certified hearings reporter to make a verbatim record, or a transcript, of the hearing. The party is responsible for all associated costs. If a verbatim record is made, the party shall provide the Commission with a copy of the audiotape, free of charge. If a transcript is made, the party shall provide the Commission with the original of the transcript free of charge.

The provisions of this §145.20 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.21. Evidence.

- (a) Rules of evidence in general. The rules of evidence as applied in non jury civil cases in the district courts of this state shall be followed. Irrelevant, immaterial or unduly repetitious evidence is excluded. When necessary to determine facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted. This is true except when precluded by statute, if the evidence is of a type commonly relied upon by reasonably prudent individuals in the conduct of their affairs.
- (b) Rules of privilege. The rules of privilege recognized by law are in effect.
- (c) Objections to evidentiary offers. Objection to evidentiary offers may be made and must be noted in the record.

- (d) Written evidence. Subject to these requirements, any part of the evidence may be received in written form if a hearing is to be expedited and if the parties' interests will not be substantially prejudiced.
- (e) Prepared testimony. The prepared testimony of a witness upon direct examination, either in narrative or in question and answer form, may be incorporated in the record or if read or received as an exhibit after the witness has been sworn and has identified that the prepared testimony is as true and accurate as his oral testimony would be. The witness is subject to clarifying questions and to cross-examination. The prepared testimony is subject to a motion to strike either in whole or part.
- (f) Documentary evidence. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.
- (g) Official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the Commission's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data. Parties must be given an opportunity to contest the material so noticed. The special skills and knowledge of the Commission and the Texas Workers' Compensation Commission staff may be used in evaluating the evidence.
- (h) Burden of proof. The burden of proof rests with the Commission except in hearings conducted pursuant to the Texas Workers' Compensation Act, Article 8308-8.26, when the burden of proof rests with the party seeking relief.
- (i) Proof. Proof required to prevail at a contested case hearing shall be by a preponderance of the evidence.

The provisions of this §145.18 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.22. Reimbursement, Travel Expenses, and Fees for Witnesses and Deponents.

- (a) Reimbursement of witness or deponent. A witness or deponent who is not a party and who is served with a subpoena or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that are necessary for the proceeding is entitled to receive:
 - (1) reimbursement for travel in an amount generally applicable to state employees for traveling to and from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's residence; and
 - (2) either a fee in the amount equal to the rate of per diem generally applicable to state employees, or \$30.00 a day, whichever is greater, for each day or part of a day the person must be present as a witness or deponent.
- (b) Responsibility for costs. The party who calls the witness is responsible

The provisions of this §145.22 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.23. Decision of the Hearing Officer.

- (a) Deliberation. After all evidence has been heard, the hearing officer adjourns the hearing. No later than 60 days after the date of the hearing, the hearing officer makes a final decision or proposal for decision pursuant to the Texas Workers' Compensation Act, '2.09 (f).
- (b) Final decision. The final decision is based solely upon the record of the individual case. It is in writing and includes separate findings of fact, conclusions of law, and decision or order.

- (c) Findings of fact. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (d) Basis for findings of fact. Findings of fact must be based exclusively on the evidence and on matters officially noticed.
- (e) Entry of orders. The hearing officer enters orders that are necessary to implement the decision. If it is determined an administrative penalty violation has occurred, the decision shall set forth the amount of the penalty assessed and shall order payment.
- (f) Furnishing decision. The decision shall be sent immediately to the petitioner and respondent by certified mail return receipt requested, or personally delivered. A receipt verifying personal delivery shall be procured by the person who makes the personal delivery and shall be file-stamped and placed in the hearing file.
- (g) Finality of decision. The hearing officer's decision is final on the date it is received. Receipt is evidenced by personal service or certified mail, return receipt requested.
- (h) Exhaustion of administrative remedies. Receipt of the hearing officer's decision constitutes exhaustion of all administrative remedies. No motion for rehearing will be entertained. A party dissatisfied with a decision of the hearing officer may seek judicial review as provided by the Administrative Procedure and Texas Register Act, '19.

The provisions of this §145.23 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.24. Special Provisions for Imposing Sanctions Pursuant to the Texas Workers' Compensation Act, §2.09(f)

- (a) After holding a hearing, then the hearing officer shall prepare a proposal for decision on a sanction that would:
 - (1) deprive a person of the right to practice before the Commission for more than 30 days;
 - (2) deprive a person of the right to receive remuneration for more than 30 days; or
 - (3) revoke, or suspend for more than 30 days, a license, certificate, or permit required to practice in the field of workers compensation.
- (b) The proposal for decision shall contain:
 - (1) a statement of the reasons upon which the decision is based;
 - (2) a concise finding of facts based on the evidence presented and matters officially noticed; and
 - (3) a statement of the conclusions of law necessary to the proposed decision.
- (c) The proposal for decision may also contain:
 - (1) a summary of the evidence presented by each party;
 - (2) a list of all mitigating circumstances and a list of all aggravating circumstances, separately stated, which are necessary for the Commissioners to have complete understanding of the case; and
 - (3) the sanction or other discipline recommended by the hearing officer.

- (d) A copy of the proposal for decision shall be served by personal delivery or certified mail, return receipt requested to each party or attorney of record, no later than 45 days after the hearing.
- (e) Any party may file briefs and exceptions no later than 15 days after receipt of the proposal for decision. All briefs and exceptions shall be served on all parties as provided in '145.10 of this title (relating to Filing Instruments; Furnishing Copies).
- (f) Replies to the exceptions and briefs shall be filed no later than 10 days after the filing of the exceptions and be served on all parties.
- (g) The Commissioners shall, consider the case at properly posted open meeting, no later than 90 days after the date of the last filing of exceptions or briefs or replies to exceptions or briefs. Parties shall be notified of the final decision of the Commissioners by certified mail, return receipt requested.

The provisions of this §145.24 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.25. Special Provisions for Administrative Penalties.

- (a) Required response to assessment of administrative penalty. Not later than the 30th day after the hearing officer's decision assessing an administrative penalty becomes final, the charged party shall file with the executive director:
 - (1) the full amount of the penalty, in the form of a cashier's check, a certified check, or a certified draft; or
 - (2) a bond for the full amount of the penalty. The bond must be:
 - (A) executed by a licensed surety company authorized to do business in Texas;
 - (B) approved by the Commission;
 - (C) made payable to the Texas Workers' Compensation Commission; and
 - (D) must be effective until all judicial review is final.
- (b) Judicial review. Compliance with the subsection (a) of this section is required if the party wishes to seek judicial review of the violation or the amount of the penalty. Failure to comply with subsection (a) of this section will result in:
 - (1) waiver of all legal rights to seek judicial review of the violation or the amount of the penalty; and
 - (2) initiation of enforcement action by the Commission.

The provisions of this §145.24 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.26. Record of the Hearing.

The record of the hearing includes:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;

- (4) questions and offers of proof, objections, and rulings of them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

The provisions of this §145.26 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.27. Transcript or Duplicate of the Hearing Audiotape.

- (a) A party may submit a request to the Commission for a transcript of the hearing audiotape. The requestor shall pay the cost of the transcript, as established by the Commission.
- (b) A party may submit a request to the Commission for a duplicate of the hearing audiotape. The requestor shall pay the cost of the duplication, as established by the Commission.

The provisions of this §145.27 adopted to be effective June 12, 1991, 16 TexReg 2989.

§145.28. Expenses To Be Paid by Petitioner.

- (a) Upon receiving a copy of a petition filed in district court which seeks judicial review of a final decision in a contested case decided under this chapter, the Commission shall prepare a certified copy of the entire record of the proceeding under review, including a transcript of the hearing audiotape, and transmit it to the reviewing court.
- (b) The Commission shall assess to the party seeking judicial review, expenses incurred by the Commission in preparing this copy, including transcription costs. Upon request, the Commission shall consider the financial ability of the party to pay the costs or any other factor which is relevant to a just and reasonable assessment of costs. If the party seeking judicial review is an injured employee, the Commission shall not charge for duplicating the record.

The provisions of this §145.28 adopted to be effective June 12, 1991, 16 TexReg 2989; amended to be effective September 1, 1993, 18 TexReg 5214.